

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BOBBI BOCKORAS,	)	
	)	
Plaintiff,	)	
	)	2:13-cv-00334
v.	)	
	)	Judge Mark R. Hornak
SAINT-GOBAIN CONTAINERS,	)	
d/b/a Verallia North America,	)	
	)	
Defendant.	)	

**ORDER**

AND NOW, this 4<sup>th</sup> day of February, 2014, upon consideration of the parties' filings and after hearing oral argument on February 3<sup>rd</sup>, 2014, for the reasons stated on the record in open court in the presence of counsel and the Plaintiff, is hereby ORDERED that:

- 1) Defendant's Motion to Dismiss [ECF No. 32] is DENIED without prejudice. The Court cannot at this juncture, under the context-specific analysis for a materially adverse action set out in *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006), conclude as a matter of law that the allegations contained in the Complaint in this case do not plausibly state a retaliation claim under 29 U.S.C. § 215(a)(3). This Order does not preclude Defendant from raising an argument on the same grounds based on the developed record at summary judgment.
- 2) Defendant's Motion to Strike [ECF No. 32] is DENIED without prejudice to its later reassertion. The Court concludes that it would inappropriate, on the record as it now exists, to rule on whether the punitive damages, non-wage compensatory damages, and declaratory and injunctive relief requested by Plaintiff are or are not recoverable. Given the specific language of 29 U.S.C. § 216(b), which provides that any employer who violates the provisions of § 215(a)(3) "shall be liable for such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3)," the Court cannot now conclude as a matter of law that there could not be a circumstance in this case where such damages would be necessary and proper to effectuate those statutory purposes. Such determination must be based on the factual record generated in a specific case. Therefore, the Court will allow a full factual record to be developed in discovery. This Order does not preclude Defendant from reasserting its arguments in relation to its Motion to Strike once the record is complete, at summary judgment.



Mark R. Hornak  
United States District Judge

cc: All Counsel of Record